



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
|-----------------|-------------|----------------------|---------------------|------------------|

10/766,478

01/29/2004

Helmut Fitz

2004_0121A

3722

513 7590 08/18/2009

WENDEROTH, LIND & PONACK, L.L.P.

1030 15th Street, N.W.,

Suite 400 East

Washington, DC 20005-1503

EXAMINER

TRAN, HANH VAN

ART UNIT

PAPER NUMBER

3637

MAIL DATE

DELIVERY MODE

08/18/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JULIUS BLUM GESELLSCHAFT MBH

Appeal 2009-003248
Application 10/766,478
Technology Center 3600

Decided: August 18, 2009

Before JAMESON LEE, RICHARD TORCZON, and SALLY G. LANE,
Administrative Patent Judges.

LEE, *Administrative Patent Judge.*

DECISION ON APPEAL

A. STATEMENT OF THE CASE

This is a decision on appeal by the real party in interest, Julius Blum Gesellschaft mbH (JBG), under 35 U.S.C. § 134(a) from a final rejection of

claims 27-35 and 40-50. We have jurisdiction under 35 U.S.C. § 6(b). We affirm-in-part.

References Relied on by the Examiner

| | | |
|--------------------|-------------|---------------|
| Humphrey | 3,075,820 | Jan. 29, 1963 |
| Rock et al. (Rock) | 4,090,753 | May 23, 1978 |
| AT '664 | AT 404664 B | Jan. 25, 1999 |
| Murdoch | NZ 507,687 | Sep. 11, 2001 |

The Rejections on Appeal

The Examiner rejected claims 27-34 and 46-50 under 35 U.S.C. § 103(a) as unpatentable over Murdoch, Humphrey, and Rock.

The Examiner rejected claims 40-45 under 35 U.S.C. § 103(a) as unpatentable over Murdoch, Humphrey, Rock, and AT '664.

The Examiner rejected claim 35 as unpatentable under 35 U.S.C. § 112, second paragraph, as indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The Invention

The invention relates to a drawer having drawer frame members and an inwardly angled front panel. The front panel is adjustable relative to frame members and is formed of two separate panel portions that are also adjustable relative to one another. (Spec. 1:3-13.)

Independent claim 27 is reproduced below (Claims App'x 1:1-7):

27. A drawer comprising:
two drawer frame members;

a rear wall attached to said drawer frame members;
a drawer bottom between said drawer frame members; and
a front facing panel adjustably attached to said drawer frame members, said front facing panel including at least two panel portions adjustable relative to one another and arranged so that said front facing panel is angled inwardly.

B. ISSUES

1. Has JBG shown that the Examiner erred in determining that the combined teachings of Murdoch, Humphrey, and Rock suggest a drawer with a front facing panel that is adjustable with respect to drawer frame members?

2. Has JBG shown that the Examiner erred in determining that the combined teachings of Murdoch, Humphrey, and Rock suggest a front facing panel that is formed of two panel portions that are adjustable with respect to one another?

3. Has JBG shown that the Examiner was incorrect in determining that claim 35 is indefinite?

C. FINDINGS OF FACT

Murdoch

1. Murdoch discloses a corner storage unit having a plurality of boxlike containers or drawers 2 with a pair of side frame members 8 and 9 that enable the drawers to slide horizontally on a track mounted in the storage unit. (Murdoch 4:31-5:28.)

2. Each drawer includes front facing paneling 10 that includes a pair of panel portions that are angled inwardly. (*Id.* at Fig. 3.)

3. Murdoch does not describe that the paneling is adjustably attached to the frame members or that the panel portions that make up the paneling are adjustable relative to one another.

Rock

4. Rock discloses fastening devices for the front panel of a drawer that renders the front panel adjustable relative to supporting components of the drawer. (Rock 1:4-11.)

5. Rock discloses that each fastening device 3 includes retaining part 4 and supporting part 5. (*Id.* at 2:30-31.)

6. Each retaining part 4 is secured to one end of front panel 14. (*Id.* at 2:57-60; Fig. 6.)

7. Each supporting part 5 is secured to guide rails 2. (*Id.* at 2:31-34; 3:31-36.)

8. Although not shown in its figures, Rock discloses that its drawer includes drawer side walls, *i.e.*, frame members, wherein the guide rails are attached to the frame members. (*Id.* at 2:17-20.)

9. Rock states (*Id.* at 1:12-20):

The object of such fastening devices, which are being used more and more especially in modern kitchen designs, is to provide fastening for the front panels of drawers or also for the front plates of pull-out boards, which allows the moving and final adjustment of the front panel in at least three-dimensions, so that even with bigger tolerances that are incurred, for example during assembly of the guide rails of the drawer, the front panel can be evenly and vertically aligned.

10. Rock also discloses that its fastening devices provide adjustment “in all directions” (Rock 1:53-55) and specifically refers to sideways, *i.e.* horizontal, adjustment of its front panel (Rock 2:65-68).

Humphrey

11. Humphrey discloses an angled cabinet having a collection of stacked drawers configured for placement in the corner of a room.

(Humphrey 2:13-31; Fig. 1.)

12. In Humphrey, one of the drawers includes a pair of radial walls or panels 78, 80 that are each mitered so as to form a right angle corner when attached and is reinforced by a block 82 which is screwed to the ends of the radial walls. (*Id.* at 4:17-20.)

13. Humphrey further discloses that the cabinet and its drawers are designed to be disassembled or “knocked down” so that the cabinet takes up minimal space for transportation to and reassembly at a different location. (*Id.* at 6:22-37.)

D. PRINCIPLES OF LAW

The relevant inquiry in an obviousness analysis is what the combined teachings of the references collectively would have suggested to one of ordinary skill in the art, not what the references individually expressly disclose. *See In re Lamberti*, 545 F.2d 747, 750 (CCPA 1976).

What references suggest is taken in the context of the knowledge, skill and reasoning ability of one with ordinary skill in the art. *Syntex (U.S.A) LLC v. Apotex, Inc.*, 407 F.3d 1371, 1380 (Fed. Cir. 2005).

A prior art reference must be considered for everything it teaches by way of technology and is not limited to the particular invention it is describing and attempting to protect. *EWP Corp. v. Reliance Universal Inc.*, 755 F.2d 898, 907 (Fed. Cir. 1985).

E. ANALYSIS

JBG argues the claims in three separate claim groupings: (1) claims 27, 28, 31-34, and 40-50; (2) claims 29 and 30; and (3) claim 35.

Claims 27, 28, 31-34, and 40-50

JBG argues dependent claims 28, 31-34, and 40-50 collectively with independent claim 27. Claim 27 was rejected as unpatentable over the combined teachings Murdoch, Humphrey, and Rock.

We focus on the disputed limitations. The dispute centers on the requirements in claim 27 directed to the adjustability of the front facing panel. In particular, claim 27 requires a front facing panel that is “adjustably attached to said drawer frame members[.]” (Claims App’x 1:5.) The claim also requires that the front facing panel includes “at least two panel portions adjustable relative to one another[.]” (Claims App’x 1:5-6.) Thus, the claim includes two separate adjustability requirements for the front facing panel, one involving the drawer frame and one involving separate portions of the front panel.

The examiner found that Murdoch discloses all the limitations of claim 27 except for the above-quoted adjustability requirements of the front facing panel. (Ans. 3:14-4:5.) To make-up the deficiency, the Examiner turned to the collective teachings of Humphrey and Rock and concluded that making Murdoch’s inwardly angled front panel adjustable in the ways required by claim 27 would have been obvious to one of ordinary skill in the art. (Ans. 4:6-5:10.)

JBG argues each adjustability requirement of claim 27 separately. JBG first argues that neither Humphrey nor Rock teach a front facing panel

that is adjustably attached to drawer frame members. (App. Br. 6:7-13 and 6:17-20.)

We reject JBG's argument. Rock discloses fastening devices for the front panel of a drawer that render the front panel adjustable relative to supporting components of the drawer. (Rock 1:4-11.) In particular, Rock discloses that each fastening device 3 includes retaining part 4 and supporting part 5. (*Id.* at 2:30-31.) Each retaining part 4 is secured to one end of front panel 14. (*Id.* at 2:57-60; Fig. 6.) Each supporting part 5 is secured to guide rails 2. (*Id.* at 2:31-34; 3:31-36.) Although not shown in its figures, Rock discloses that its drawer includes drawer side walls, *i.e.*, frame members, wherein the guide rails are attached to the frame members. (*Id.* at 2:17-20.) Furthermore, as explained in Rock (*Id.* at 1:12-20):

The object of such fastening devices, which are being used more and more especially in modern kitchen designs, is to provide fastening for the front panels of drawers or also for the front plates of pull-out boards, which allows the moving and final adjustment of the front panel in at least three-dimensions, so that even with bigger tolerances that are incurred, for example during assembly of the guide rails of the drawer, the front panel can be evenly and vertically aligned.

Thus, Rock establishes that due to variability in the assembly of any particular set of drawers, it is desirable to connect a drawer front panel to the guide rails of drawer frame members via fastening devices that enable alignment or adjustment of the front panel relative to the frame members. We reject JBG's argument that Rock does not disclose a front facing panel of a drawer that is adjustably attached to drawer frame members.

Moreover, JBG does not explain why the benefit of an adjustable front panel for a drawer, as taught in Rock, would not also have applied to the

front panel of Murdoch's drawer. A person of ordinary skill in the art, who is also a person of ordinary creativity, *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 421 (2007), would have readily recognized from Rock's teachings that making the front panel of a drawer adjustable enables alignment of the panel with other portions of the drawer and drawer cabinet. A skilled artisan would have known that the adjustment mechanism of Rock for the front panel of Murdoch in relation to the drawer would have similar application in Murdoch's corner storage unit.

JBG also argues that neither Humphrey nor Rock teach a front facing panel that includes at least two panel portions adjustable relative to one another. (App. Br. 5:25-26 and 6:20-21.) According to JBG, there is no motivation to modify Murdoch to include adjustable panel portions. (*Id.* at 6:23-27.)

JBG's argument is misplaced. The argument is based on the express teachings of Humphrey and Rock and ignores what the references would have reasonably suggested to a person of ordinary skill. The relevant inquiry in an obviousness analysis is what the combined teachings of the references collectively would have suggested to one of ordinary skill in the art, not what the references individually expressly disclose. *See In re Lamberti*, 545 F.2d at 750. What references suggest is taken in the context of the knowledge, skill and reasoning ability of one with ordinary skill in the art. *Syntex (U.S.A) LLC*, 407 F.3d at 1380.

Here, Humphrey discloses an angled cabinet having a collection of stacked drawers configured for placement in the corner of a room. (Humphrey 2:13-31; Fig. 1.) In Humphrey, one of the drawers includes a pair of radial walls or panels 78 and 80 that are screwed together to form a

right angle corner. (*Id.* at 4:17-20.) Humphrey further discloses that the cabinet and its drawers are designed to be disassembled or “knocked down” so that the cabinet takes up minimal space for transportation to, and reassembly at, a different location. (*Id.* at 6:22-37.) Thus, Humphrey establishes that for a drawer which is configured for placement in a cabinet corner, the inwardly angled panels that form the front of the drawer may be separated from one another to facilitate disassembly and transport of the drawers to a separate location for reassembly. In light of the teachings of Humphrey, one with ordinary skill in the art would have recognized that making the angled panel portions of Murdoch’s front panel separable from one another would have allowed Murdoch’s drawer to be disassembled and then reassembled in another location.

Furthermore, as discussed above, Rock teaches that due to tolerances of drawer components, there is a degree of variability in how those components fit together during assembly. To account for that variability, Rock describes that its drawer components are connected together by devices that allow for alignment of those components by adjusting their position after assembly. Although Rock discloses that its adjustable connections are between a drawer front panel and drawer frame members, one with ordinary skill in the art would not have viewed that disclosure as limited in its teaching value to the attachment of only those two components. Indeed, a prior art reference must be considered for everything it teaches by way of technology and is not limited to the particular invention it is describing and attempting to protect. *EWP Corp.*, 755 F.2d at 907.

In this case, the level of ordinary skill in the art is such that one with ordinary skill would have realized that the benefit of Rock’s adjustable

connection would have applied to connections other than those that are particular to Rock's invention. That is, a skilled artisan would have reasonably recognized that other drawer components may be adjustably connected to one another so that they may be evenly aligned after assembly of the drawer. Applying the collective teachings of Humphrey and Rock to the drawer of Murdoch suggests that the front panel of the drawer could be composed of two separable panel portions that are adjustably connected to one another such that they may be aligned after the drawer is assembled. The adjustable drawer front panel that is suggested by the combined teachings of Murdoch, Humphrey, and Rock meets the corresponding adjustability requirement in claim 27.

For the foregoing reasons, we sustain the rejection of claims 27, 28, 31-34 and 46-50 as unpatentable over Murdoch, Humphrey, and Rock. We also sustain the rejection of claims 40-45 as unpatentable over Murdoch, Humphrey, Rock, and AT '664.

Claims 29 and 30

Claims 29 and 30 are each dependent on claim 27 and add a requirement directed to adjustability of the front panel portions in a horizontal direction. Claim 29 adds the limitation "wherein said panel portions are adjustable in the horizontal direction relative to said drawer frame members." (Claims App'x 1:10-11.) Claim 30 adds the limitation "wherein said panel portions are adjustable in the horizontal direction relative to each other." (Claims App'x 1:12-13.)

The Examiner rejected claims 29 and 30 as unpatentable over the combined teachings of Murdoch, Humphrey, and Rock. In arguing the

rejection of those claims, JBG contends that Humphrey does not teach adjustment of its front panel in a horizontal direction. (App. Br. 7:23-8:10.)

JBG's argument is unpersuasive. In accounting for the adjustability requirements of claim 29 and 30, the Examiner did not rely solely on the teachings of Humphrey. Rather, the Examiner also pointed to Rock for its "teaching of allowing two members of a drawer adjustably connected to one another in the horizontal and vertical directions in order to overcome manufacturing tolerances." (Ans. 8:11-13.) Rock discloses that its adjustment mechanisms provide adjustment "in all directions" (Rock 1:53-55) and specifically refers to sideways, *i.e., horizontal*, adjustment of its front panel (Rock 2:65-68). Taking those teachings of Rock together with the above-noted teachings of Humphrey, and applying them to the drawer of Murdoch, a person of ordinary skill in the art would have recognized as obvious that Murdoch's front panel would have been adjustable in the horizontal direction in the ways required by claims 29 and 30. JBG has not shown that the Examiner erred in rejecting claims 29 and 30 based on the combined teachings of Murdoch, Humphrey, and Rock.

We sustain the rejection of claims 29 and 30 as unpatentable over Murdoch, Humphrey, and Rock.

Claim 35

The Examiner rejected claim 35 as unpatentable under 35 U.S.C. § 112, second paragraph, as indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 35 is dependent on claim 34, which is dependent on claim 33, which in turn is dependent on claim 27. Claims 33, 34, and 35 are reproduced below (Claims App'x 1:18-2:3):

33. The drawer of claim 27, wherein said panel portions are connected together by a fitment.

34. The drawer of claim 33, wherein said fitment includes at least two angle portions screwed to each other.

35. The drawer of claim 34, wherein a first one of said angle portions has vertical slots, a second one of said angle portions has horizontal and vertical slots, and a third one of said angle portions has horizontal slots and round holes.

According to the Examiner, “[s]ince claim 34 recited ‘at least two angle portions’ which is just two angle portions, the recitation in claim 35 of a total of three angle portions renders the claim[] indefinite.” (Ans. 7:4-6.)

The term “at least two angle portions” in claim 34 does not limit the number of angle portions to only two. That three angle portions are required in claim 35 is fully consistent with the language “at least two.”

We do not sustain the rejection of claim 35 as unpatentable under 35 U.S.C. § 112, second paragraph.

F. CONCLUSION

1. JBG has not shown that the Examiner erred in determining that the combined teachings of Murdoch, Humphrey, and Rock suggest a drawer with a front facing panel that is adjustable with respect to drawer frame members.

2. JBG has not shown that the Examiner erred in determining that the combined teachings of Murdoch, Humphrey, and Rock suggest a front

Appeal 2009-003248
Application 10/766,478

facing panel that is formed of two panel portions that are adjustable with respect to one another.

3. JBG has shown that the Examiner was incorrect in determining that claim 35 is indefinite.

G. ORDER

The rejection of claims 27-34 and 46-50 under 35 U.S.C. § 103(a) as unpatentable over Murdoch, Humphrey, and Rock is affirmed.

The rejection of claims 40-45 under 35 U.S.C. § 103(a) as unpatentable over Murdoch, Humphrey, Rock, and AT '664 is affirmed.

The rejection of claim 35 as unpatentable under 35 U.S.C. § 112, second paragraph, is reversed.

AFFIRMED-IN-PART

Ack

cc:

WENDEROTH, LIND & PONACK, L.L.P.
1030 15th Street, N.W.,
Suite 400 East
Washington DC 20005-1503